Supreme Court, U.S.
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No. 10-233

IN THE

Supreme Court of the United States

WILLIAM PORCH, Police Officer,

Petitioner,

v.

MICHAEL GARRISON,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether a panel of the Third Circuit was correct in concluding that recovery by plaintiff on his § 1983 claim for excessive force would not necessarily imply the invalidity of plaintiff's conviction for simple assault, given that under plaintiff's version of the disputed facts, plaintiff's assault on the police officer occurred before the officer responded with the force that plaintiff claims was excessive.

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COUNTERSTATEMENT OF THE CASE

In this § 1983 action, plaintiff Michael Garrison seeks to recover damages for severe injury caused by defendant William Porch's use of allegedly excessive force during an incident that resulted in Garrison's arrest for public urination, disorderly conduct, resisting arrest and assault. Porch, a police officer employed by the City of Wildwood, New Jersey, broke Garrison's neck. Garrison later pled guilty to resisting arrest and simple assault, both of which are disorderly person's offenses under New Jersey law.

The district court granted Porch's motion for summary judgment, concluding that Garrison's excessive force claim is barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). According to the district court, Garrison could not possibly succeed on his excessive force claim without implying the invalidity of his conviction for simple assault because Garrison did not deny committing the assault and did not claim that the assault was committed in self-defense of the allegedly excessive force used by Porch. Pet.App. at 25a-26a; *see also* Pet.App. at 7a.

A panel of the Third Circuit vacated and reversed in a non-precedential decision. Construing the facts in the light most favorable to Garrison as the non-moving party on the summary judgment motion, the panel found that at the beginning of the incident, Garrison spun around and raised his hands aggressively as if to strike Porch. In response to that simple assault, Porch grabbed Garrison by the arm, forced him to the ground and jumped on Garrison's back, breaking Garrison's neck.

Pet.App. at 2a-3a. The panel concluded that under *Heck*, Garrison's conviction for simple assault does not bar his § 1983 claim because if Garrison were to prevail on his claim, it would not necessarily imply the invalidity of his conviction for simple assault: "A reasonable jury could find that, even considering Garrison's initial behavior which constituted a simple assault, Porch used an unreasonable amount of force in arresting him, and in doing so violated his constitutional rights." Pet.App. at 10a-11a.

The Third Circuit denied Porch's petition for rehearing en banc. Pet.App. at 39a-40a.

REASONS FOR DENYING THE PETITION

I. THE PETITION MISSTATES RELEVANT FACTS.

The petition misstates the facts in three important respects. First, the petition states that the assault and the allegedly excessive force were "inextricably intertwined" with other events that occurred during the incident, such as Porch's completion of the handcuffing of Garrison. Second, the petition implies that the assault was committed in response to the allegedly excessive force, as opposed to the allegedly excessive force being inflicted in response to the assault. Third, the petition states that Garrison admitted that the assault caused Porch to sustain injury. These factual misstatements form the foundation of the petition.

A. There Was a Factual Dispute as to Whether the Assault and the Use of Allegedly Excessive Force Were "Inextricably Intertwined" With Subsequent Events.

The petition repeatedly states that the assault by Garrison and the allegedly excessive force used by Porch are "inextricably intertwined" with subsequent events, and it implies that the assault occurred *after* the use of the allegedly excessive force. *See, e.g.*, Petition at 15 (stating that "here, the alleged excessive force and the assault on the police officer were inextricably intertwined in a single course of events unbroken by the subject being restrained, handcuffed or submitting to a lawful arrest"); Petition at 33 (stating that "Garrison's theoretical argument that he resisted arrest and attempted to assault Porch before Porch used allegedly excessive force was completely at odds with the summary judgment record").

The district court and the court of appeals were, of course, required to construe the facts in the light most favorable to Garrison, the party opposing summary judgment. *See* Pet.App. at 2a. Under Garrison's version of the events, Porch used excessive force in direct response to Garrison's simple assault – an assault that consisted of Garrison's raising clenched fists toward Porch in a threatening manner. Subsequent events are analytically distinct from the assault and from Porch's responsive use of force.

It was undisputed that on the evening of March 29, 2002, Garrison went with friends to two or three bars, where he consumed alcoholic beverages and took an

ecstasy pill. Pet.App. at 13a. At approximately 1:50 a.m., Garrison began to urinate outside Keenan's Bar. Porch, a police officer dressed in plain clothes, saw Garrison urinating. *Id.*

At this point, the parties' versions of the events diverged. Pet.App. at 14a. According to Garrison's deposition testimony, Porch approached Garrison, grabbed his bicep, turned him around, and held both of Garrison's wrists[1] in his hands. When Garrison turned around, he had both fists clenched up near his chin with the knuckles facing away from his body. Pet.App. at 14a; JA160, ¶34; JA399, ¶34.[2]

Garrison next remembered Porch pulling him to the ground. Pet.App. at 14a. He recalled that his ear and stomach were on the sidewalk, that his face was forced into the ground, and that he heard the bones breaking in the back of his neck. Pet.App. at 14a. Garrison recalled telling Porch, "I think you broke my neck," to which Porch, leaning down, replied, "Well, you shouldn't have been resisting arrest." JA163, ¶50; JA400, ¶50.

Porch disagreed with this description of the events. He recalled that after he grabbed Garrison and told him he was under arrest, Garrison resisted and attempted to head-butt him. Porch recalled that Garrison then spun around with his fist raised in a motion to hit Porch, that Porch pulled Garrison to the ground, and that

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1. The district court opinion mistakenly says "fists" instead of "wrists." Pet.App. at 14a.

2. References to "JA" are to the Joint Appendix filed in the Third Circuit.

Garrison continued to thrash his (Garrison's) entire body to avoid handcuffing. Porch recalled that he radioed for back-up after securing one handcuff and that, when another officer arrived, Porch sat down below Garrison's knees to stop him from kicking. According to Porch, it was at this point that Garrison began to complain of neck and back pain and that Garrison told Porch that Porch broke his neck. Pet.App. at 14a-15a.

Garrison pled guilty to an amended charge of simple assault in violation of N.J. Stat. Ann. 2C:12-1a and to purposefully resisting arrest in violation of N.J. Stat. Ann. 2C:29-2a. Pet.App. at 16a-17a.[3] As to simple assault, New Jersey Stat. Ann. 2C:12-1 provides:

> a. Simple assault. A person is guilty of assault if he:
>
> (1) **Attempts to cause** or purposely, knowingly or recklessly causes **bodily injury to another; or**
>
> (2) Negligently causes bodily injury to another with a deadly weapon; or
>
> (3) **Attempts by physical menace to put another in fear of imminent serious bodily injury.**
>
> Simple assault is a disorderly persons offense unless committed in a fight or scuffle entered

3. The statutes are cited in the district court's opinion as "N.J. Stat. Ann. 2C:12-1A" and "N.J. Stat. Ann. 2C:29-2A." Pet.App. at 16a-17a n.2.

> into by mutual consent, in which case it is a petty disorderly persons offense.

New Jersey Stat. Ann. 2C:12-1a; *see* Pet.App. 16a-17a n.2 (emphasis added).

Although Porch's version of the facts is different, Garrison's version alleges that his assault occurred before Porch used excessive force. More specifically, a jury could find the following sequence of events: (1) Porch approached Garrison, grabbed his bicep, turned him around, and held both of his wrists in his hands; (2) when Garrison turned around, he had both fists clenched up near his chin with the knuckles facing Porch; (3) Porch forced Garrison to the ground so that his ear and stomach were on the sidewalk; (4) Porch then forced Garrison's face into the ground; and (5) it was at that point that Garrison heard the bones breaking in the back of his neck. The assault would be Garrison's clenching of his fists toward Porch, which was either an attempt to cause bodily injury or an attempt to put Porch in fear of imminent serious bodily injury. In response to that assault, Porch used force so excessive that it broke Garrison's neck.

When viewed in the light most favorable to Garrison, the summary judgment record does not support Porch's contention that the assault and the allegedly excessive force were "inextricably intertwined" with subsequent events, such as Garrison's kicking or Porch's completion of the handcuffing. A reasonable jury could find that the allegedly excessive force was used by Porch in direct response to the simple assault.

B. There Was a Factual Dispute as to Whether Garrison Caused Porch to Sustain Any Injury.

Porch also mischaracterizes the nature of the assault committed by Garrison. Porch asserts that "Garrison's § 1983 claim is barred pursuant to *Heck* because **Garrison's admitted facts** on the summary judgment record, **that he both attempted to cause and subsequently did in fact cause bodily injury to Porch** by admittedly repeatedly kicking him while Porch was attempting to arrest him, would necessarily imply the invalidity of the prior conviction for assault, N.J.S.A. 2C:12-1(a)." Petition at 4-5 (emphasis added). In the same vein, Porch asserts that the summary judgment record shows that "Porch was injured from Garrison's kicks[.]" Petition at 20.

The issue of whether Garrison caused Porch to sustain any injury was sharply disputed. Garrison denied injuring Porch, and Porch's official investigation report makes no mention of Garrison making contact with Porch using either his fists or his legs. JA416-22. On the summary judgment motion, when Garrison stated as fact that "Officer Porch never mentions Plaintiff Garrison making contact with his person utilizing his fists or legs in his official investigation report dated April 2, 2002" (JA409, ¶2), Porch denied the statement – but not on the ground that contact was actually made, and without mentioning Garrison's kicks. Instead, Porch stated: "The report contains numerous accounts of Plaintiff's physically resisting arrest, raising his hands to strike Officer Porch, and the 'alarming personal fear' [Porch] felt." JA591, ¶2.

Consistent with Porch's official report, the criminal complaint issued to Garrison for resisting arrest and aggravated assault made no mention of actual contact or of any injury sustained by Porch. With respect to aggravated assault, the complaint alleged that Garrison "attempt[ed] to cause bodily injury" to Porch by "making a fist and raising his fist and arm towards the officer." JA210. No contact was alleged. *Id.* The ensuing indictment for aggravated assault identified no specific act of assault, stating only that Garrison "did attempt to cause and/or purposely, knowingly or recklessly cause[d] bodily injury" to Porch. JA214.

Garrison pled guilty to an amended charge of simple assault. Pet.App. at 16a. He thus admitted that he "[a]ttempt[ed] to cause or purposely, knowingly or recklessly cause[d] bodily injury to another" or "[a]ttempt[ed] by physical menace to put another in fear of imminent serious bodily injury." N.J. Stat. Ann. 2C:12-1a(1) & (3). As is demonstrated above, the simple assault charge to which Garrison pled guilty is consistent with Garrison's denial that he caused Porch to sustain any injury. That statute can be violated even by an attempt to cause bodily injury to another or by "[a]ttempt[ing] by physical menace to put another in fear of imminent serious bodily injury." Porch's statement that he felt "alarming personal fear" (JA591, ¶2) is consistent with the type of simple assault in which no physical contact is made.

Finally, it may be reasonably presumed that if Garrison caused Porch to sustain any injury, Porch would have pursued a counterclaim against Garrison. Porch did file an amended counterclaim, in which he asserted

claims for assault and battery, intentional infliction of emotional distress, negligent infliction of emotional distress and common law negligence. JA135-42. However, Porch thereafter consented to the dismissal of his counterclaim with prejudice. JA670.1; *see* Petition at 13.

By basing his petition on an inaccurate statement of facts, Porch undermines his legal arguments. His failure to present the facts with accuracy is sufficient reason for the Court to deny the petition. Sup.Ct.R. 14.4.

II. THE PANEL'S DECISION IS GROUNDED IN THE PARTICULAR FACTS OF THIS CASE AND DOES NOT REFLECT A CONFLICT WITH DECISIONS OF OTHER CIRCUITS.

The panel stated that although the Third Circuit "has not squarely addressed the issue of whether a simple assault conviction necessarily serves as a bar to a § 1983 excessive force claim under *Heck*, other courts of appeals to have considered factually similar cases have generally held that the mere fact of a conviction for assault or similar conviction arising out of the same incident does not automatically preclude recovery on an excessive force claim brought under § 1983." Pet.App. at 9a. The panel cited cases from five other circuits, followed by a "*But see*" citation to *Cummings v. City of Akron*, 418 F.3d 676, 682-83 (6th Cir 2005). *Id.* The panel then stated: "We agree with the majority of other courts of appeals to have faced this issue in rejecting Porch's argument that Garrison's conviction for simple assault automatically precludes him recovering on his § 1983 claim." Pet.App. at 9a-10a.

Porch seizes on this language to argue that the courts are in conflict. However, the outcome of each case cited, like the outcome of this case, depended on the particular facts and statutes involved. All of the decisions recognized that under *Heck*, an assault or analogous conviction **may** preclude recovery on a § 1983 excessive force claim. Like the panel here, however, the courts examined the record of the particular case to determine the sequence of events and the elements of the statute and then reached a determination on the basis of the particular facts.

For example, in *Dyer v. Lee*, 488 F.3d 876, 882 (11th Cir. 2007), the court looked "at the beginning and at the end of the altercation" and determined that, because the allegedly excessive force did not occur until after plaintiff kicked the officer, there could be "no argument that Dyer's initial kick could have been justified as self-defense." *Id.* Similarly, in *Thore v. Howe*, 466 F.3d 173, 180 (1st Cir. 2006), the court stated: "Just as it is true that a § 1983 excessive force claim after an assault conviction is not necessarily barred by *Heck*, it is also true that it is not necessarily free from *Heck*. The excessive force claim and the conviction may be so interrelated factually as to bar the § 1983 claim."

The Sixth Circuit's decision in *Cummings v. City of Akron*, 418 F.3d 676, 682-83 (6th Cir 2005), cited by the Third Circuit panel after a "*But see*" citation, is different only because that court used seemingly categorical language when concluding that plaintiff's assault conviction meant that his excessive force claim was *Heck*-barred. The court stated:

> [S]uccess on Cummings' excessive force claim would necessarily imply the invalidity of his state assault conviction. The struggle between Cummings and the officers gave rise to both Cummings' assault conviction and the excessive force claim, and the two are inextricably intertwined. Additionally, Cummings could have raised excessive force as a defense to the assault charge, but instead he chose not to contest the charge. Thus, we hold that *Heck* bars Cummings' excessive force claim from moving forward, and we affirm the district court's grant of summary judgment to defendants on this claim.

Cummings, 418 F.3d at 682-83.

It may well be that in *Cummings*, the assault conviction and the excessive force claim were "inextricably intertwined" as a result of the protracted back-and-forth struggle described in the opinion – a struggle that was not susceptible to a finding that the assault was complete before the allegedly excessive force was used. If so, the panel in *Garrison*, and the courts in the other cases it cited as being in the "majority," would likely have reached the same result as the Sixth Circuit. What sets *Cummings* apart is not its holding but its failure to acknowledge that in a different factual scenario, the assault conviction might not bar the § 1983 claim.

III. PORCH'S OTHER ARGUMENTS ARE ALSO UNCONVINCING.

Porch proffers several additional reasons for granting the petition. They do not withstand scrutiny.

A. The Third Circuit Did Not "Create a Different Standard of Review Than Required by *Heck*."

Porch asserts that "the Third Circuit's reference to a split among the circuit courts of appeals led it to create a different standard of review than required by *Heck*." Petition at 16. That is not so.

First, the decision is not precedential and therefore did not "create" a standard of any sort. The Third Circuit panel wrote "solely for the benefit of the parties." Pet.App. at 2a. Under the Third Circuit's Internal Operating Procedures, such a decision "do[es] not have the imprimatur of the full court," does not bind the full court, and is not precedent for the district courts of the Third Circuit. *In re Grand Jury Investigation*, 445 F.3d 266, 278 (3d Cir.), *cert. denied*, 549 U.S. 997 (2006).

Second, Porch has seized upon a mere semantic distinction between the Third Circuit panel's characterization of the key issue in the case and the expression of the applicable standard in *Heck*. The petition states:

> [T]he Third Circuit referenced a split in the circuit courts of appeals on the issue of whether an assault conviction for the person arrested **automatically precludes** that

> person from recovering on his § 1983 claim against the arresting officer.

Petition at 15 (emphasis in original).

In fact, the panel explained that although the Third Circuit "has not squarely addressed the issue of whether a simple assault conviction necessarily serves as a bar to a § 1983 excessive force claim under *Heck*, other courts of appeals to have considered factually similar cases have generally held that the mere fact of a conviction for assault or similar conviction arising out of the same incident does not automatically preclude recovery on an excessive force claim brought under § 1983." Pet.App. at 9a. Earlier in its opinion, the panel noted that under *Heck*, "a plaintiff may not recover damages under § 1983 if doing so would [necessarily] imply the invalidity of a prior conviction." Pet.App. at 7a (citing *Heck*, 512 U.S. at 487).

The petition focuses on the panel's use of the words "automatically preclude" to argue that the decision veers from *Heck*. However, the panel used that phrase in response to the district court's holding that Garrison's assault conviction precluded recovery on his § 1983 claim. *See* Pet.App. at 7a ("The District Court held that Garrison could not possibly succeed on his excessive force claim without implying the invalidity of his conviction for simple assault"). In the district court's view, "[i]t would be incongruous to hold that Garrison 'attempted to cause or purposely, knowingly or recklessly caused bodily injury to' Porch, while at the same time Porch's use of force in effecting Garrison's arrest was excessive." Pet.App. at 25a. The district court continued as follows:

> The incongruity is even more evident when looking at what Garrison needs to prove to prevail on his excessive force claim. To prevail on his excessive force claim, Garrison must prove that Porch's use of force was not objectively reasonable. To do so, Garrison could try to argue that he never attempted to, or actually did, cause bodily injury to Porch. That argument, however, would contradict his conviction for assaulting Porch. Garrison could also try to argue that the force used by Porch was not reasonably necessary. This second claim would invalidate his assault conviction because it would imply that he acted in self-defense, which is a justification defense under New Jersey law.

Pet.App. at 25a.

In short, the Third Circuit panel understood – and correctly applied – the *Heck* standard. The panel used the phrase "automatically preclude" as a shorthand description of the district court's holding that Garrison could not possibly succeed on his § 1983 claim without implying the invalidity of his conviction for simple assault. The panel's characterization of *Heck* was correct, as was its description of the district court's holding.

B. The Panel Did Not Depart From Standard Judicial Conduct.

According to Porch, the panel erred by "accept[ing] Garrison's argument that there was a version of the

events which would prevent the court from barring his subsequent excessive force claim under *Heck*." Petition at 19. Porch disparages Garrison's version of the events as "nothing more than a theoretical possibility." *Id.* at 20. He then says that the panel's acceptance of Garrison's argument was "not an erroneous factual finding, but rather an acceptance of an argument that was completely at odds with the summary judgment record, which is a departure from standard judicial conduct." *Id.*

Porch thus attempts to accomplish two things: (1) to avoid the import of the final paragraph of Supreme Court Rule 10, which states that "a petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings"; and (2) to fit his argument within the language of Rule 10(a), which indicates that the Court considers granting certiorari when a court of appeals "has so far departed from the accepted and usual course of judicial proceedings ... as to call for an exercise of this Court's supervisory power." But this argument is like trying to fit a square peg into a round hole.

As is demonstrated in Point I, the summary judgment record, when viewed in the light most favorable to Garrison, supported the claim that Garrison assaulted Porch by raising his clenched fists in a threatening manner and that Porch responded to that simple assault by using excessive force. If a jury were to accept Garrison's version of the events, it would find that the assault was complete by the time Porch responded with the allegedly excessive force. The panel emphasized that its holding is "in no way an assessment

of the merits of Garrison's claim." Pet.App. at 11a n.3. The panel reversed the district court "solely because Garrison's claim for relief is not necessarily inconsistent with the fact of his simple assault conviction." *Id.*

Even assuming *arguendo* that the panel's assessment of the summary judgment record was erroneous, that would not constitute such a substantial departure "from the accepted and usual course of judicial proceedings ... as to call for an exercise of this Court's supervisory power." Sup.Ct.R. 10(a). The error would consist of nothing more than erroneous factual findings. *Cf. Key v. Wise*, 454 U.S. 1103, 1104, 1005 (1981) (Brennan, J., dissenting from denial of petition for writ of certiorari) (stating that where court of appeals dismissed appeal from district court order that, in dissenters' view, "was a patent flouting of [a] congressional mandate preempting state court jurisdiction," the issue was "of such moment," and the asserted error was "so egregious," as to call for an exercise of Court's supervisory power).

C. The Panel Did Not Misstate the New Jersey Simple Assault Statute in Any Material Way.

In a footnote paraphrasing the New Jersey simple assault statute, the panel did not mention the portion that addresses "purposely, knowingly or recklessly caus[ing] bodily injury to another." Pet.App. at 3a n.1; *see* New Jersey Stat. Ann. 2C:12-1a. The panel then stated: "Since no deadly weapon was used in the incident, we must conclude that Garrison was convicted of either attempting or threatening to cause bodily damage to Porch.... Garrison denies actually striking Porch." *Id.*

On the basis of this footnote, Porch makes the following argument:

> The Third Circuit should have noted that by pleading guilty to assault Garrison admitted that he not only attempted to cause but also purposely, knowingly or recklessly did cause bodily injury to Porch. The Petitioner concedes that Supreme Court Rule 10 states that a misapplication of a properly stated rule of law is rarely the error for which a Petition for a Writ of Certiorari is granted. In this case, however, it was not the misapplication of the properly stated rule of law which led to the error, but a complete misstatement of the rule of law followed by an analysis of the facts of this case using the misstated and incomplete statute which led to the error.

Petition at 22.

This argument is correct only insofar as it identifies an omission in the panel's paraphrasing of the statute. Contrary to Porch's argument, Garrison's guilty plea is consistent with two portions of the simple assault statute that do not require a conclusion that he "purposely, knowingly or recklessly did cause bodily injury to Porch." The assault was Garrison's clenching of his fists toward Porch, which was either an "attempt[] to cause ... bodily injury to another" or an "attempt[] by physical menace to put another in fear of imminent serious bodily injury." New Jersey Stat. Ann. 2C:12-1a (1) & (3); *see* Point I *supra*.

The panel's reversal of the district court did not result from any misunderstanding of the simple assault statute. The central theme of the decision is that, when the summary judgment record is viewed in the light most favorable to Garrison, Garrison committed an assault to which Porch responded with excessive force – and that, therefore, recovery on Garrison's § 1983 excessive force claim would not necessarily imply the invalidity of the conviction for simple assault. Any misstatement in the footnote is irrelevant to the holding.

D. The Panel Did Not Err in Finding the Availability of Self-Defense to Be Irrelevant Under the Facts of This Case.

In Point IV of the petition, Porch again asserts that the panel erroneously accepted Garrison's "theoretical argument that his resistance and assault only occurred before the allegedly excessive force." Petition at 23. As is explained in Point I, however, Garrison's position was supported by the summary judgment record.

Porch also argues that the panel "erred when it accepted Garrison's argument that there was only an attempted assault, which was only committed before Porch used excessive force, **not to repel the excessive force.**" Petition at 24 (emphasis in original). There was no such error.

First, Garrison never argued that there was only an "attempted assault," and the panel recognized that Garrison pled guilty to simple assault. Garrison maintained, however, that he did not cause Porch to sustain any injury and that Porch responded to the

assault with excessive force. Again, the panel recognized that under this version of the events, which had to be accepted as true for purposes of the summary judgment motion, recovery on the § 1983 excessive force claim would not necessarily imply the invalidity of the conviction.

Second, the panel recognized that contrary to the district court's analysis, to prevail on his excessive force claim Garrison would not have to "try to argue that he never attempted to, or actually did, cause bodily injury to Porch," or that he acted in self-defense. See Pet.App. at 25a. The panel explained:

> Porch ... argues that because Garrison could have, but did not used [sic] self-defense as an affirmative defense to the charge of simple assault, his conviction establishes as a matter of law that his conduct was not justified, and he is therefore barred by *Heck* from recovering on his excessive force claim. However, due to the nature of Garrison's factual claims as alleged in his complaint and pleadings, the issue of self-defense is irrelevant. Garrison has not claimed that his act of simple assault was committed to protect himself. He acknowledges that he assaulted Porch before Porch allegedly used excessive force. He claims that after his act of assault, Porch then responded by using a degree of force that was much greater than was reasonably necessary to subdue him and place him under arrest. This is clearly a claim of excessive force in response to an assault, and

> the theoretical possibility of a self-defense claim in other simple assault cases is of no relevance to the present case.

Pet.App. at 10a.

The panel's conclusion was correct given the particular facts of this case. Porch was not justified in responding to Porch's simple assault with excessive force, and the unavailability of a self-defense claim with respect to that offense suggests nothing about whether the force used by Porch was excessive.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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